IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4674 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

JAMIRUDDIN BASHIRUDDIN KAZI

Versus

JOINT CHARITY COMMISSIONER

Appearance:

MR TUSHAR MEHTA for Petitioner

MR BS PATEL for Respondent No. 2

MR KS JHAVERI for Respondent No. 3

CORAM : MR.JUSTICE M.S.SHAH

Date of decision: 17/11/2000

CAV JUDGEMENT

In this petition under Article 226 of the Constitution, a beneficiary of Pir Burhansha Dargah Trust, respondent No. 2 herein, has prayed for a writ of mandamus to direct the Joint Charity Commissioner, Baroda to require the trustees and the builders constructing a shopping centre on the land belonging to respondent No.2-trust to allot the shops therein only after issuing public advertisement and by inviting offers/tenders.

2. The facts giving rise to this petition, briefly stated, are as under :-

2.1 Respondent No. 2-trust owns and possesses land admeasuring about 5309 sq.mtrs. in revenue survey No. 312, Final Plot No. 25 in Petlad town. There were existing shops on the said land and the shops were occupied by the tenants paying nominal rent. The trustees of respondent No. 2 trust entered into agreement dated 27.5.1993 with respondent Nos. 3 and 4, builders, under which respondent Nos. 3 and 4 would construct shops on another land for the old tenants and construct shops on the land in question which shops would be allotted by respondent Nos. 3 and 4 with a stipulation that respondent No.2 trust remains owner of the land and the shops and the allottees become tenants of respondent No. 2 trust with liability to pay monthly rent of Rs.300/-. The trust is not required to pay any amount to the builder for the construction of the shops and also an office for respondent No. 2 trust. This agreement came to be implemented after the Joint Charity Commissioner, Baroda, respondent No. 1 herein, passed order dated 12.5.1995 (Annexure "A") granting permission for this arrangement as recorded in the agreement dated 27.5.1993.

2.2 In view of the aforesaid order dated 12.5.1995 of the Charity Commissioner approving the agreement dated 27.5.1993, respondent Nos. 3 and 4 got vacant possession of the land in question by persuading the tenants occupying the old shops to shift to other premises constructed by respondent Nos. 3 and 4 on another piece of land at the cost of respondent Nos. 3 and 4. Respondent Nos. 3 and 4 started and completed the construction of 26 shops, admeasuring 15' x 10' = 150 sq.ft. each, but before the shops could be allotted, the petitioner filed the present petition contending that the shops must be disposed of by inviting tenders through public advertisement; otherwise, respondent Nos. 3 and 4-builders would get substantial amounts by way of deposit (sukhdi-paghdi) while respondent No. 2 trust will only get nominal rent of Rs.300/- per month in respect of each shop. According to the petitioner, he approached respondent No. 1 who sent the papers to respondent No. 5-Gujarat State Wakf Board. Without pursuing the matter before respondent No. 5, the petitioner approached this Court.

3. Notice was issued to the respondents. Affidavit in reply has been filed by the Managing Trustee of respondent No. 2-trust stating that the Joint Charity

Commissioner had passed the order as far back as in 1995 approving the arrangement incorporated in the agreement dated 27.5.1993 between the trustees of respondent No. 2 trust and respondent Nos. 3 and 4 and, therefore, the petition suffers from delay. It is also submitted that when the matter is before respondent No. 5-Wakf Board, the petition is not maintainable.

4. At the hearing of this petition, Mr Tushar Mehta, learned counsel for the petitioner has submitted that the trust should not have any objection to disposal of the shops after issuing a public advertisement inviting tenders so that the trust gets the maximum price. It is submitted that the arrangement as per the agreement dated 27.5.1993 is not in the interests of the trust and is in fact against the interests of the trust.

5. On the other hand, Mr BS Patel for respondent No. 2 and Mr KS Jhaveri for respondent Nos. 3 and 4 have opposed the petition and have submitted that the petition suffers from gross delay as the transaction approved by the Joint Charity Commissioner in 1995 is sought to be disturbed in this petition filed in the year 1999. In the meantime, respondent Nos. 3 and 4 have already acted to their prejudice by constructing 26 shops after the erstwhile shops occupied by old tenants have been demolished and the shops have been constructed elsewhere for them. Respondent No. 3 and 4 have already invested lacs of rupees for constructing these shops and shops for old tenants of respondent No. 2. It is submitted on behalf of respondent No. 2 that respondent No. 2 had very negligible income of only about Rs.9,000/- by way of rent from the old shops on the land in question. In order to enhance the income of the trust, respondent No. 2 entered into the arrangement with respondent Nos. 3 and 4 after obtaining the approval of the Joint Charity Commissioner as per the order dated 12.5.1995. The trust did not have to spend a single pie either for the construction of new shops or for constructing shops for the old tenants and the trust will now be getting monthly rent of Rs.300/- every month with the result that the yearly rental income of the trust will be more than Rs.90,000/- as against the yearly income of only about Rs.9,000/- earlier. It is submitted that respondent Nos. 3 and 4 have invested more than Rs.30 lacs for development of the shops which will remain of the ownership of respondent No. 2-trust and for constructing office for respondent No. 2 trust free of charge and also providing other facilities to respondent No. 2 trust. It is further submitted that looking to the monetary investments and the investment of time and

energy by respondent Nos. 3 and 4 in this project, the profit likely to be realized by respondent No. 3 by way of getting deposit from the new tenants of respondent No. 2 trust would be just reasonable considering the present recessionary price. The allegations of collusion between respondent No. 2 on the one hand and respondent Nos. 3 and 4 on the other hand are denied.

6. Having heard the learned counsel for the parties, this Court is of the view that while there is some substance in the argument urged on behalf of the respondents that the petition suffers from delay, in as much as the agreement dated 27.5.1993 was approved by the Joint Charity Commissioner as far as back as on 12.5.1995,the petitioner kept quiet and allowed the parties to act upon the agreement and only when the shops were about to be let out that the petitioner has approached this Court. Looking to the peculiar facts and circumstances of the case particularly the fact that there were sitting tenants in the old shops on the land in question and that respondent Nos. 3 and 4 agreed to shift those tenants by constructing new shops for them elsewhere and that respondent Nos. 3 and 4 have made the investment of money, time and energy for constructing the new shops on the land in question without requiring respondent No.2-trust to spend a single rupee and that the trust will now get regular rental income from the newly constructed shops in question, the Court does not find any infirmity with the basic arrangement as such and in this view of the matter, the Court is not inclined to give any direction to respondent No. 2 to issue a public notice for inviting tenders for allotting the shops in question.

7. At the same time, considering the fact that the monthly rent of Rs.300/- to be collected from the tenants of the shops in question was fixed as far back as in the year 1993 and considering the passage of time and the fall in the value of money, the Court heard the learned counsel for the parties on the question of the amount of monthly rent to be paid by the tenants who are going to be allotted shops on rental basis.

Mr BS Patel for respondent No. 2 has produced a certificate dated 9.10.2000 from the Chief Officer, Petlad Municipality indicating the rate of deposit and the monthly rent being collected from the tenants of shops in shopping centres constructed by the Petlad Municipality. It further appears that each shop in the instant case admeasures 15' x 10 ' i.e. about 150 sq.ft.

The learned counsel for the parties have submitted that the Court may suitably revise the amount of rent in light of the above material.

9. Considering the submissions made by the learned counsel for the parties, in the facts and circumstances of the case, it appears to the Court that the interests of justice would be served if the petition is disposed of in the following terms :-

I Respondent Nos. 2, 3 and 4 may proceed to allot shops on rental basis in accordance with the agreement dated 27.5.1993 approved by the Joint Charity Commissioner by his order dated 12.5.1995 (Annexure "A") subject to the conditions that respondent NO.2-trust shall remain the owner of the land and the ships and that instead of stipulating the monthly rent for each shop at only Rs.300/- as mentioned in the said agreement dated 27.5.1993, the tenants shall be required to pay respondent No. 2 trust monthly rent at the rate of Rs.4/- per sq.mtr. i.e. Rs.600/(exclusive of municipal taxes, education cess, electricity charges, and charges for common amenities) with a clause in all the concerned documents that respondent No. 2 trust will be entitled to revise the rent after five years in accordance with law.

II The trustees of respondent No.2-trust shall be entitled hereafter to construct, or get constructed, any other and further shops on the land in question or on the existing shops through any other agency in accordance with law, without being hampered by the agreement dated 27.5.1993.

10. Rule is made absolute to the aforesaid extent only. There shall be no order as to costs.

(M.S. Shah, J.)

sundar/-